

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

STEVEN MACIAS, HEIRS OF
FERNANDO MACIAS AND
REPRESENTATIVE OF THE ESTATE
OF FERNANDO MACIAS; YVONNE
SHILLING, HEIRS OF FERNANDO
MACIAS AND REPRESENTATIVE OF
THE ESTATE OF FERNANDO
MACIAS; AND WALTER MACIAS,
HEIRS OF FERNANDO MACIAS AND
REPRESENTATIVE OF THE ESTATE
OF FERNANDO MACIAS;

SA-21-CV-00193-JKP

Plaintiffs,

VS.

BEXAR COUNTY, UNIVERSITY
MEDICAL ASSOCIATES,

Defendants.

ORDER

Before the Court in the above-styled cause of action is Bexar County's Motion to Exclude Expert Testimony of Dr. Sanjay Adhia and Dr. Jasdeep Dalawari [#92]. By its motion, Bexar County asks the Court to strike Plaintiffs' expert designations of Drs. Adhia and Dalawari due to Plaintiffs' failure to serve the materials required by Federal Rule of Civil Procedure 26(a)(2).

This Court’s Scheduling Order imposed a deadline of May 23, 2023, for Plaintiffs to designate experts and file the materials required by Rule 26. (Scheduling Order [#80].) On May 23, 2023, Plaintiffs filed their expert designations, which included a long list of “non-retained experts.” (Expert Designations [#86].) However, Plaintiff attached to these designations the C.V.s of two of the designated experts—Dr. Adhia and Dr. Dalawari—and requested an

extension of time to provide Defendants with Dr. Adhia's expert report. Plaintiffs therefore appeared to be treating these two experts as retained experts for whom expert reports and other materials must be provided. *See* Fed. R. Civ. P. 26(a)(2)(B). Plaintiffs then filed a second set of designations on May 24, 2023, after the expiration of the expert designation deadline. (Expert Designations [#87].) This second set of designations appears to be duplicative of the first.

Bexar County asserts in its motion that it agreed to give Plaintiffs an additional 21 days to serve Bexar County with Rule 26 materials. (*See* Ex. B [#91].) The new deadline lapsed, and Plaintiffs requested another week to provide the materials. (*Id.*) After the second extension of time expired, Plaintiffs asked for another six days—until July 5, 2023—to serve the materials. (*Id.*) On June 30, 2023, Bexar County responded that it would agree to a July 5 deadline for Dr. Adhia's materials, but would not agree to accept Dr. Dalawari's materials, given that Dr. Dalawari is located in Virginia, requiring extensive travel to depose him, and attention was needed to meet other discovery and pending deadlines. (*Id.*) Ultimately, Plaintiffs never served the materials required by Rule 26(a)(2)(B).

Plaintiffs' response in opposition to the motion was due September 18, 2023. *See* W.D. Tex. Loc. R. CV-7(D)(2). To date, Plaintiffs have not filed a response. Pursuant to Local Rule CV-7(D)(2), if there is no response filed within the time period prescribed by the rules, the court may grant the motion as unopposed. In light of the record as set forth by Bexar County and Plaintiffs' failure to respond to Bexar County's motion, the Court will grant the motion and exclude the expert testimony of Dr. Adhia and Dr. Dalawari as requested.

IT IS THEREFORE ORDERED that Bexar County's Motion to Exclude Expert Testimony of Dr. Sanjay Adhia and Dr. Jasdeep Dalawari [#92] is **GRANTED** as unopposed.

IT IS FURTHER ORDERED that the expert testimony of Dr. Sanjay Adhia and Dr. Jasdeep Dalawari is hereby **EXCLUDED**.

SIGNED this 20th day of September, 2023.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE